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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,318	02/12/2004	Bruce Schofield	16420BAUS01U	5590
34645 7590 01/06/2010 Anderson Gorecki & Manaras, LLP Attn: John C. Gorecki P.O BOX 553 CARLISLE, MA 01741			EXAMINER PATEL, CHURAG R	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 01/06/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/777,318

**Applicant(s)**

SCHOFIELD ET AL.

**Examiner**

CHIRAG R. PATEL

**Art Unit**

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 5-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 20, 2009 has been entered.

***Response to Arguments***

Applicant's arguments with respect to claims 1-2 and 5-13 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments for claim 1 that Rapaport assumes the existence of the underlying network and does not address how transmission of medical images should be monitored as the medical images are passed through the communication network itself, claim 1 limitations are directed to "monitoring a medical image network transaction" ... "relating to the delivery of the medical image", and notifying an entity... status of the medical image network transaction if the medical image network transaction is delayed on the network or of an estimated time of delivery of the medical image", examiner equates alerts medical providers of problems encountered in making urgent delivery attempt is equated as a delay in the delivery of the medical image.

In response to applicant's argument for claim 12, please see the body of the rejections.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter is directed to "software per se", and thus fails to falls within a statutory category of invention. These steps fail to be embodied on a medium or a hardware structure that meets a statutory category of invention.

Claim 13 is rejected under 35 U.S.C. 101 due to its dependence on claim 12.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 5-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Rapaport et al. – hereinafter Rapaport (US 2006/0161457).

As per claim 1, Rapaport discloses a method of monitoring transmission of medical images on a data communications network as the medical images are transported within the data communication network,, the method comprising the steps of:

monitoring a medical image network transaction by a medical image transport service deployed on the data communication network, ([0855]) , said medical image network transaction relating to the delivery of the medical image ([0023]; effective delivery of medical service information, [0215]; radiologist's reading ) over a dynamically determined route on the data communication network as the medical images are transported within the data communication network; and ([0238]; internet)

notifying an entity associated with a transaction request which caused the medical image network transaction to be initiated as to the status of the medical image network transaction if the medical image network transaction is delayed on the network or f an estimated time of delivery of the medical image. ([0098]; Alerts may be used to selectively notify various Medical Providers or Testing Facility Personnel of problems encountered in making urgent delivery attempts and/or of recently-gathered and important Patient information, [0545]; delivery status data: delivery time)

As per claim 2, Rapaport discloses the method of claim 1, wherein the entity associated with the transaction request is a client application. ([0211])

As per claim 5, Rapaport discloses the method of claim 1, wherein the step of notifying comprises notifying the entity of a change in scheduled time for delivery of the medical image ([0098], [0545]; Update the Delivery Schedule)

As per claim 6, Rapaport discloses the method of claim 1, wherein the step of notifying comprises notifying the entity of a delay in scheduled delivery of the medical image. ([0098])

As per claim 7, Rapaport discloses the method of claim 6, wherein the step of notifying comprises notifying the entity of the reason for the delay, the source of the delay, the location of the delay, ([0842]; Figure 10: item 1055) and if other images can still be retrieved. ([0845]; Figure 10: item 1064)

As per claim 8, Rapaport discloses the method of claim 6, wherein the step of notifying comprises notifying the entity of a likely resolution to the delay. ([0846]; Figure 10: item 1088)

As per claim 9, Rapaport discloses the method of claim 1, wherein the network is a first network, ([0091]; internet) and wherein the step of notifying comprises sending a notification ([0098]) on a second network. ([0091]; internet)

As per claim 10, Rapaport discloses the method of claim 9, wherein the second network is separate from the first network, ([0091]; internet) and wherein the notification ([0098]) is a data message generated on the second network. ([0091])

As per claim 11, Rapaport discloses the method of claim 10, wherein the data message is at least one of an e-mail, a pager message, and a voice message. ([0213])

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport (US 2006/0161457) in view of Walker et al. – hereinafter Walker (US 2001/0039580).

As per claim 12, Rapaport discloses a medical image transport service deployed on a communication network to monitor the transmission of medical images on the data communication network as the medical images are transported within the data communication network, comprising:

a data management service to monitor the transmission of medical images over a dynamically determined route on the data communication network as the medical images are transported within the data communication network ([0855])

a client interface configured to provide notifications to a client related to the status of the transmissions of medical images on the network if the medical images are delayed on the network or of an estimated time of delivery of the medical images. ([0098]; Alerts may be used to selectively notify various Medical Providers or Testing Facility Personnel of problems encountered in making urgent delivery attempts and/or of recently-gathered and important Patient information, [0545]; delivery status data: delivery time)

Rapaport fails to disclose determine how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network.



Walker discloses determining how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network. ([0078], [0149]-[0153]; Figure 8C and Figure 8D)

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Rapaport to disclose how the medical images are being handled by network elements forming the data communication network to estimate when the medical images will be delivered by the data communication network and to detect sources of delay in transmission of the medical images within the data communication network that may affect delivery of the medical images by the data communication network. The motivation for doing so would have been to provide a capability would enable a user connected to the router to be billed for the quantity of data transmitted or received from the network and could optionally additionally provide the customer with data indicating the quality of service provided. ([0012])

As per claim 13, Rapaport / Walker disclose the method of claim 12. Rapaport discloses further comprising a network resource manager configured to interface network devices in the network to resolve delays in the network attendant to transmission of medical images on the network. ([0846]; Figure 10: item 1088)

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gendron et al. (US 2002/0023172) is directed to routing medical images within a computer network.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chirag R Patel whose telephone number is (571)272-7966. The examiner can normally be reached on Monday to Friday from 8:00AM to 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on (571) 272-1915.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/C. R. P./  
Examiner, Art Unit 2454

/NATHAN FLYNN/  
Supervisory Patent Examiner, Art Unit 2454